

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 20, 2003

D042270 People v. Ventittelli

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D042569 In re Michael D., a Juvenile

The respondent's motion to dismiss the appeal is granted. The appeal is dismissed.

D041760 Adkins v. Allen

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

Court convened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Terry O'Rourke

Clerk: D. E. Moore

D039836 People v. Clark

Cause called on merits. Debra R. Torres-Reyes, Esq. argued for appellant. Lynne McGinnis, Esq. argued for appellant. Cause submitted.

D040636 Kale v. Cover-All, Inc.

Cause called on merits. Cynthia Lee Stratton, Esq. argued for appellant. Jonathan Mark Levitan, Esq. argued for respondent. Mr. Stratton replied. Cause submitted.

D039557 Labirinto SRL v. LJFRP, LLC

Cause called on merits. Tim Daley, Esq. argued for appellant. John W. Howard, Esq. argued for respondent. Mr. Daley replied. Cause submitted.

D039451 BRH-Garver, Inc. v. City of San Diego

Cause called on merits. Peter Lindborg, Esq. argued for appellant. Regina Terea Coleman, Esq. was present in oral argument for appellant, but did not argue. Michael R. McGuinness, Esq. argued for respondent. Donald R. McKillop, Esq. was present in oral argument for respondent, but did not argue. Mr. Lindborg replied. Cause submitted.

Court recessed at 2:51 p.m. until Tuesday, October 21, 2002 at 1:30 p.m.

D042294 In re Julian R. et al., Juveniles

Respondent's unopposed motion to dismiss the appeal is granted. The appeal is dismissed.

D043074 Will et al. v. Superior Court of San Diego County/Wigington

The petition is denied.

D042990 San Diego County Health and Human Services Agency v. Superior Court of San Diego County/Carl R.

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D042277 In re Rountree on Habeas Corpus

Let an order to show cause issue why the relief prayed for in the petition should not be granted. Pursuant to Penal Code section 1508, subdivision (b), the order to show cause is made returnable to the San Diego Superior Court before the trial judge in this matter.

D041179 In re Alyssa F., a Juvenile

Order certifying opinion for partial publication.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
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D042291 In re K.S., a Juvenile

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D041729 People v. Thayer

The judgment is affirmed in part and reversed in part. McDonald, J.; We Concur: Benke, Acting P.J., Haller, J.

D040029 Weide v. J&W Redwood Lumber Co., Inc.

The judgment is affirmed. J&W is awarded costs on appeal. McConnell, PJ.; We Concur: Benke, J., McIntyre, J.

D037264 People v. Baumer

The judgment is reversed as to counts 1 and 2 and the matter remanded with directions for the trial court to conduct an in camera inspection as set forth in this opinion. After its inspection, the trial court should either reinstate the judgment or order a new trial as to counts 1 and 2 depending on the outcome of the proceedings. The judgment is affirmed as to counts 3 and 4. Haller, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

D042972 In re Trexler on Habeas Corpus

The petition is denied.

D043022 In re Pogue on Habeas Corpus

The petition is denied.

D040212 People v. Gill

The judgment is affirmed. Benke, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D040889 People v. Pooucher

The judgment is affirmed. Huffman, J.; We Concur: McConnell, PJ., O'Rourke, J.

D042859 LeMaitre v. Calimas

Pursuant to California Rules of Court, rule 8, the appeal filed September 10, 2003, is dismissed for failure of appellant to timely deposit costs for preparing the record on appeal.

D043019 In re Estate of Seene

Request for permission to appeal received by this court on October 17, 2003, is denied. The appeal filed with the Superior Court on September 16, 2003, is dismissed.

D042871 Angela R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Angela R. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 21, 2003 (Continued)

D042920 Michelle A. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Michelle A. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case as to Michelle A. is dismissed.

Response to Ray K.'s Petition for Writ of Mandate and/or Prohibition filed October 16, 2003 is due 10 days from the date of this order.

Court convened at 1:30 p.m.

Present: The Honorable Judith Haller, Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

Clerk: D. E. Moore

D040561 People v. Hills

D041656 In re Hills on Habeas Corpus

Causes called on merits. Susan K. Keiser, Esq. argued for appellant. Kelley Johnson, Deputy Attorney General argued for respondent. Ms. Keiser replied. Cause submitted as to appeal ONLY, D040561.

D040805 People v. Shufelt

Cause called on merits. Lewis A. Wenzell, Esq. argued for appellant. Garrett Beaumont, Deputy Attorney General argued for respondent. Mr. Wenzell replied. Cause submitted.

D040249 North American Specialty Insurance Company v. St. Paul Mercury Insurance Company

Cause called on merits. Joseph L. Oliva, Esq. argued for appellant. Robert A. Olson, Esq. argued for respondent. Mr. Oliva replied. Cause submitted.

D040220 Salco Espresso & Restaurant Systems, Inc. v. B. H. Gold Insurance Agency, Inc.

Cause called on merits. Matthew J. Liedle, Esq. argued for appellant. Steven Michael O'Neal, Esq. argued for respondent. Mr. Liedle replied. Cause submitted.

Court recessed at 2:50 p.m. until Wednesday, October 23, 2003 at 8:30 a.m.

D043079 Fry's Electronics, Inc. v. Superior Court of San Diego County/Apex Wholesale, Inc.

The petition is denied. The stay issued on October 16, 2003, is vacated.

D043042 Greiner v. Superior Court of San Diego County/People

The petition is denied.

D043035 Stockton v. Superior Court of San Diego County/People

The petition is denied.

D043023 In re Young on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA

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D043038 In re Brown on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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October 22, 2003

D042966 In re Ventittelli on Habeas Corpus

At the request of petitioner, the petition for writ of habeas corpus is dismissed.

D042675 Donna S. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McDonald, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

Court convened at 8:30 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

Clerk: D. E. Moore

D040566 People v. Brooks

Cause called on merits. Patrick J. Hennessey, Esq. argued for appellant. Lisa Jacobsen, Deputy Attorney General argued for respondent. Mr. Hennessey replied. Cause submitted.

D040271 Rosales v. Battle et al.

Cause called on merits. Terry Singleton, Esq. argued for appellant. John Morris, Esq. argued for respondent. Mr. Singleton replied. Cause submitted.

D040381 Leeson et al. v. Newgen Results Corporation et al.

Cause called on merits. Thomas Anthony Pistone, Esq. argued for appellant. John D. Collins, Esq. argued for respondent. Mr. Pistone replied. Cause submitted.

Court recessed at 10:04 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke

D041783 Global Minerals & Metals Corporation v. Superior Court/National Metals, Inc.-RPI

Matter caused on merits. H. Peter Haveles, Esq. argued for petitioner. James C. Krause, Esq. argued for real party in interest. Mr. Haveles replied. Matter submitted.

D041791 J. P. Morgan and Co., Incorporated, et al. v. Superior Court/Heliotrope General, Inc., et al.

Matter called on merits. James Windels, Esq. argued for petitioner. James C. Krause, Esq. argued for real party in interest. Mr. Windels replied. Matter submitted.

Court recessed at 11:05 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D042323 2,022 Ranch v. Superior Court/Chicago Title Insurance Company-RPI

Matter called on merits. Luke R. Corbett, Esq. argued for petitioner. M. Steven Andersen, Esq. argued for real party in interest. Richard Glen Carlston, Esq. argued for amicus curiae, California Land Title Association. Mr. Andersen replied. Mr. Corbett replied. Matter submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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October 22, 2003 (Continued)

Court recessed at 11:55 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

Clerk: D. E. Moore

D040764 Rutman v. Bennett

Cause called on merits. Keith H. Rutman, argued for appellant. Russell Bennett, argued for respondent. Mr. Rutman replied. Cause submitted.

D039911 People v. Anderson

Cause called on merits. Nancy J. King, Esq. argued for appellant. Sharon Rhodes, Deputy Attorney General argued for respondent. Cause submitted.

D039970 People v. Hamilton

Cause called on merits. Lewis A. Wenzell, Esq. argued for appellant. Pamela Ratner, Deputy Attorney General argued for respondent. Cause submitted.

D041049 Coronado Police Officers Association v. City of Coronado

Cause called on merits. Bradley M. Fields, Esq. argued for appellant. James Patrick Lough, Esq. argued for respondent. Mr. Fields replied. Cause submitted.

Court recessed at 2:30 p.m. until Thursday, October 23, 2003 at 9 a.m.

D040544 Jonathan K. v. The Adoption Center of San Diego, Inc., et al.

The judgments are affirmed. The defendants are awarded costs on appeal. McConnell, P.J.; We Concur: Benke, J., O'Rourke, J.

D043076 Baeza v. Superior Court of San Diego County/People

The petition is denied.

D041826 In re A.E. et al., Juveniles

The orders are affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., Haller, J.

D042909 In re Thompson on Habeas Corpus

The petition is denied.

D042280 In re Emanuel M., a Juvenile

The judgment is affirmed. McConnell, J.; We Concur: Huffman, J., Nares, J.

D040040 People v. Murphy

Order modifying opinion. No change in judgment. Certified for Publication.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
October 22, 2003 (Continued)

D041080 Phipps et al. v. Fike

D041508 (Consolidated) The order denying Fike's petition to compel arbitration is affirmed. Scharringhausen's request that we vacate the order granting plaintiff's motion for leave to discover his financial information is denied. Plaintiff's request for sanctions is denied. Plaintiffs are awarded their costs on appeal. Nares, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D042556 In re the Marriage of Makarov

Pursuant to California Rules of Court, rule 8, the appeal filed July 3, 2003, is dismissed for appellant's failure to timely designate the record (Cal. Rules of Court, rules 4(a) and 5(a)).

D042996 Christopher P. et al. v. Superior Court of San Diego County/Jonathan K.

The petition is denied. The stay issued October 8, 2003 is vacated.

D042994 Lowenthal, Landau, Fischer & Bring v. Superior Court of San Diego County/McGee et al.

The petition is denied.

D043050 In re White on Habeas Corpus

The petition is denied.

D043075 Lopez et al. v. Superior Court of San Diego County/Schaeffer et al.

The petition is denied.

D043098 Superior Court of California, County of San Diego et al. v. Board of the San Diego County Employees Retirement Association et al.

The petition is denied.

D043085 Total Transaction Management PTE, LTD. v. Superior Court of San Diego County/Wagner

The petition is denied.

D043093 In re Baker on Habeas Corpus

The petition is denied.

D043027 Kremer et al. v. Superior Court of San Diego County/Mercury Casualty Company

The petition is denied.

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D041313 People v. Meza

The judgment is affirmed. Haller, J.; We Concur: McConnell, P.J., Huffman, J.

D042079 In re I. F. et al., Juveniles

The appeal is dismissed. Huffman, Acting P.J.; We Concur: Nares, J., Aaron, J.

D041854 People v. Napolis

The order finding Napolis incompetent to stand trial is affirmed. McDonald, J.;
We Concur: Huffman, Acting P.J., Nares, J.

D040905 In re the Marriage of Eiffert

The order as to joint physical custody is affirmed; the order is otherwise reversed and the matter remanded to the superior court with directions to conduct a de novo determination of the sole physical custody and visitation arrangement upon mother's move to San Jose, and enter an order awarding sole physical custody and visitation as the evidence warrants. Father's request for sanctions is denied. The parties are to bear their own costs on appeal. O'Rourke, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D040353 In re the Marriage of Taylor

Order affirmed. Benke, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D042347 In re Broderick K., a Juvenile

The judgment terminating Father's parental rights is reversed. This matter is remanded to the juvenile court for a new section 366.26 hearing to determine a permanent plan for Broderick. The remittitur is to issue forthwith. Aaron, J.; We Concur: McConnell, P.J., Huffman, J.

D042734 Tamra A. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. Aaron, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D042124 In re Mercedes T., a Juvenile

The order is affirmed. McDonald, J.; We Concur: McConnell, P.J., Huffman, J.

D043092 In re Sarmiento on Habeas Corpus

The petition is denied.

D042912 In re Huynh on Habeas Corpus

The petition is denied.

D041376 People v. Esayian

The judgment is affirmed. CERTIFIED FOR PUBLICATION. Huffman, Acting P.J.;
I Concur: O'Rourke, J., I Concur and Dissent: McIntyre, J.

Court convened at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 23, 2003 (Continued)

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald
Clerk: D. E. Moore

D040279 Martinez, et al. v. Metabolife International, Inc.

Cause called on merits. Rex Heinke, Esq. argued for appellant. Christopher Einar Grell, Esq. argued for respondent telephonically. Mr. Heinke replied. Cause submitted.

Court recessed at 9:35 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D040742 People v. Floyd

Cause called on merits. Carmela F. Simoncini, Esq. argued for appellant. Stacy Tyler, Deputy Attorney General argued for respondent. Ms. Simoncini replied. Cause submitted.

D040579 Brenner v. City of El Cajon

Cause called on merits. Salim Khawaja, Esq. argued for appellant. Scott Patterson, Esq. argued for respondent. Cause submitted.

Court recessed at 10:07 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron
Clerk: D. E. Moore

D039428 People v. Perez

Cause called on merits. Carmela F. Simoncini, Esq. argued for appellant, and submitted additional authorities. Susan Elizabeth Miller, Deputy Attorney general argued for respondent. Cause submitted.

D040421 Barbee v. Household Automotive Finance Corporation

Cause called on merits. Mark Bennett, Esq. argued for appellant. Bob Bell, Esq. argued for respondent. Cause submitted.

D039675 Lauer et al. v. Schaefer

Cause called on merits. Loren Scott Keehn, Esq. argued for appellant. Charles A. Bird, Esq. argued for respondent. Mr. Keehn replied. Cause submitted.

D040475 People v. Cole et al.

Cause called on merits. Daniel H. Bromberg, Esq. argued for appellant. Robert Foster, Deputy Attorney General argued for respondent. Mr. Bromberg replied. Mr. Foster replied. Cause submitted.

Court recessed at 3:11 p.m. until Friday, October 25, 2003 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 23, 2003 (Continued)

D042883 Kevin B. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Latasha B. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case as to Latasha B. is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 24, 2003

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller
Clerk: D. E. Moore

D041451 Hines v. Serocki

Cause called on merits. Loren Freestone, Esq. argued for respondent. James Byrnes, Esq. argued for appellant. Cause submitted.

D040652 People v. Butler

Cause called on merits. Jared Phil Hanson, Esq. argued for appellant. Tashara Kuspa, Certified Law Student, argued for respondent. Cause submitted.

D040915 People v. Scott

Cause called on merits. Sarita Ordonez, Esq. argued for appellant. Susan Miller, Deputy Attorney General argued for respondent. Ms. Ordonez replied. Cause submitted.

D040161 People v. Madsen

Cause called on merits. Christopher Blake, Esq. argued for appellant. Betsy Hartwig, Deputy Attorney General argued for respondent. Mr. Blake replied. Cause submitted.

D039844 People v. Curry

Cause called on merits. Carl Fabian, Esq. argued for appellant. Stacy Tyler, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause to be submitted at a later date.

Court adjourned at 10:30 a.m.

D040912 People v. Hartz

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., Aaron, J.

D039836 People v. Clark

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Benke, J.

D040966 People v. Miller

The convictions are affirmed. The sentence in case No. SCS166774 for taking or driving a stolen vehicle is modified to 16 months (one-third the middle term) consecutive to the sentence in case No. SCD166542. Sentence in case No. SCS166774 for possessing a stolen vehicle is stayed. (section 654.) The trial court shall modify the abstract of judgment and advise the Department of Corrections of the modification. McDonald, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D042997 In re Wright on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 24, 2003 (Continued)

D043117 Banuelos v. Superior Court of San Diego County/People

The petition is denied.

D040166 Anticancer, Inc. v. Novartis Pharmaceuticals Corporation et al.

The order denying the Code of Civil Procedure section 425.16 motion of Novartis Pharmaceuticals Corporation, Novartis Corporation and Genetic Therapy, Inc. is reversed and the superior court is directed to enter an order granting the motion and awarding attorney fees under Code of Civil Procedure section 425.16, subdivision (c). The order denying the Code of Civil Procedure section 425.16 motion of Xenogen Corporation as to Anti Cancer, Inc.'s cause of action for trade libel, defamation based on the efficacy and licensing statements, intentional interference with contract, intentional interference with prospective economic advantage, and unfair competition is affirmed; the order as to AntiCancer's cause of action against Xenogen Corporation for defamation based on the patent infringement statements is reversed for lack of subject matter jurisdiction. The superior court is directed to give effect to and rule upon Xenogen's motions (1) for failure to state a claim on which relief can be granted; (2) for more definite statement; and (3) to strike the damage allegations and prayers as if they had been equivalent responsive pleadings filed in state court. Novartis Pharmaceuticals Corporation, Novartis Corporation and Genetic Therapy, Inc. are entitled to attorney fees on appeal in an amount to be determined by the superior court and they shall have costs on appeal. As to Xenogen Corporation's Code of Civil Procedure 425.16 motion, the parties shall bear their own costs on appeal. O'Rourke, J.;

We Concur: McConnell, P.J., McIntyre, J.

D043091 In re Govind on Habeas Corpus

The petition is denied.

D042031 In re Villasenor on Habeas Corpus

Let an order to show cause issue why the relief requested in the petition should not be granted. Pursuant to Penal Code section 1508, subdivision (b) the order to show cause is made returnable to the San Diego Superior Court. The superior court is directed to review the evidence for privilege, hold a hearing on the conflict claim and issues raised in the petition and determine the matter. In addition to the briefing previously filed, the superior court may set a schedule for additional briefing if it deems it appropriate. The superior court shall inform this court of its determination no later than February 27, 2004.

D042975 Jane R. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Jason R. has notified hte court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case as to Jason R. is dismissed.

D042998 Lopez et al. v. Superior Court of Imperial County/Imperial Irrigation District

The petition is denied. Petitioners have an adequate remedy by way of appeal.